

# SOUTHERN ENVIRONMENTAL LAW CENTER

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VIA EMAIL ([contact@psc.sc.gov](mailto:contact@psc.sc.gov))

The Honorable Jocelyn G. Boyd  
Chief Clerk/Administrator  
Public Service Commission of South Carolina  
101 Executive Center Drive  
Columbia, South Carolina 29210

Re: Comments on Proposed Pipeline Regulation  
Docket No. 2020-247-A

Dear Ms. Boyd:

The Southern Environmental Law Center submits these comments on behalf of itself, Upstate Forever, and the Friends of Beaverdam Creek. These comments respond to the comments of ORS and comments submitted by the gas pipeline industry in opposition to regulations providing for transparency, public information, and ratepayer and public protections when the industry uses eminent domain to seize private property in order to build new pipelines.

Unfortunately, the regulated gas pipeline companies stubbornly refuse to accept basic protections of private property rights, local residents, communities, natural resources, and environmental justice. The industry opposes even basic transparency, notification, and public education reforms.

These responses are particularly disappointing because at the workshop we understood Piedmont Natural Gas (PNG) to indicate that it was open to public notification, transparency, and information reforms. Indeed, the industry responses silently underscore that they have no meaningful legal or policy objections to these basic steps toward fairness and public protections; they simply would prefer to be allowed to deal with the public as they see fit, without the public being informed of their rights or the facts surrounding the proposed construction of new pipelines through their property and communities by way of the threat and/or actual exercise of eminent domain.

The gas pipeline industry makes the general and unsupported claim that the public information and transparency reforms will impede industry operations. As demonstrated in the proceedings held by the Commission and at the workshop, some of the behavior of the industry needs changing – the industry should deal with the public openly and not through ill-informed land agents, the industry should provide the public consistent and accurate information about what these monopolies are proposing to do and why, and the industry should share with the public, ratepayers, and private property owners the rationales and impacts of their proposed pipelines. These proposals would and should impede bad practices by the monopoly gas pipeline industry but would promote and encourage good operations and fair dealings.



PNG states that it has learned lessons and will conduct itself in the future consistent with at least some aspects of the proposal. This statement establishes that these reforms are needed and that the conduct that the current PNG leadership endorses should be followed by the entire industry as well as by future leadership at PNG. The public should not be required to rely upon the bare promises of the current leaders of one monopoly; rather, these protections should be set out in regulation, so that the public will be assured that these promises are in fact carried out by PNG in the future as well as by the entire industry. Again, South Carolina has learned the hard way that it cannot rely on utility promises, but instead must ensure good behavior through effective regulation and oversight.

As we set out in our June 11 comments, the Commission has full authority to put these reforms in place, and they in no way conflict with South Carolina's eminent domain procedures but in fact reinforce and support them.

**The Commission's Authority.** Neither Dominion nor PNG make a case against the Commission's authority to adopt the proposed transparency, public information, and notice requirements. Dominion does not address this aspect of our proposal at all. For its part, PNG makes no argument that South Carolina law forbids the Commission from adopting transparency and notice provisions. As set out above, it pledges to implement some of the provisions as it sees fit, but PNG does not contest the Commission's authority to ensure that such reforms are in fact followed uniformly and by the entire industry through Commission-adopted regulation.<sup>1</sup>

Unfortunately, PNG presents another version of its argument: Trust us, we're smarter than you. PNG contends that this transparency proposal "would invite comments and dispute from parties having no real comprehension of how those systems operate under varying operating conditions." PNG Comments at 4 (emphasis added). Again, as South Carolinians have learned over and over again, when a regulated utility claims superior knowledge or judgment, that is a warning sign to be sure that the utility's claims are true and supported by fact, and a reason by itself to require full transparency of the facts and analysis underlying the company's self-interested claims.

As to the Commission's authority to review and approve a proposed new pipeline, both Dominion and PNG object, but they contradict each other in the course of trying to avoid accountability.

Dominion argues that the Commission has limited powers under South Carolina law. As regards gas pipeline construction, Dominion says that the Legislature has limited the Commission's authority to post-construction cost recovery. It argues that South Carolina law

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<sup>1</sup> PNG references a simultaneous filing in Docket 2021-66-A, in which it claims to "describe[] its system planning process that is critical to ensuring the continuity of service to its customers in the case of extreme weather." PNG June 11 Comments at ¶ 9, n.3. Those comments have nothing do with the issues here. They relate to a review directed by Gov. McMaster in the wake of the Texas grid failure of the South Carolina grid's ability "to withstand potential ice storms and other dangerous winter weather conditions." PNG goes on to describe five threats to its provision of natural gas service, no one of which is landowner opposition to the exercise of eminent domain. PNG outlines the following threats: (1) damage to or structural deficiencies associated with its pipelines; (2) physical or cyberattack; (3) loss of service from South Carolina's sole pipeline supplier; (4) extreme cold weather that surpasses PNG's ability to serve firm customers; and (5) loss of services like electricity and telecommunications.



affords the Commission no role in the utility's "construction calculus." Dominion Comments at 2.

In contrast, PNG acknowledges the Commission's "statutory authority over natural gas transmission siting in South Carolina." Unlike Dominion, PNG points to the Commission's "statutory and regulatory authority" to review new gas transmission lines, "which is already substantial." PNG Comments at 4. PNG then cites to several existing Commission regulations covering such issues as reasonable expansions to serve new customers upon request (Rule 103-448); construction, installation, maintenance and operation of gas systems to assure continuity and uniformity of quality of gas service (Rule 103-460); avoiding/minimizing service interruptions (Rule 103-481). *Id.* at n.1.

PNG conspicuously omits reference to Rule 103-404 under which the Commission has already issued regulations governing the siting and approval of new gas pipelines in ways not expressly set out in statute, but authorized under the broad grant of authority contained in S.C. Code § 58-5-210. But PNG, unlike Dominion, does acknowledge the Commission's substantial regulatory and statutory authority over the siting of natural gas pipelines.

It is fatal to their arguments and strikingly conspicuous that neither Dominion nor PNG cites or discusses S.C. Code § 58-5-210, since this statute is the basis for the Commission's rulemaking authority. *See* 103-400.A (citing and quoting Section 58-5-210 and stating that ensuing regulations fixing "standards for gas service" are adopted "in accordance with" the provisions of that statute). In light of the clear grant of authority in S.C. Code § 58-5-210, Dominion stumbles badly when it argues that the Commission's jurisdiction is somehow limited to that conferred by the Natural Gas Rate Stabilization Act, S.C. Code §§ 58-5-400, *et seq.* If Dominion's argument were true, none of the existing regulations in Article 4, Rules 103-400 *et seq.*, would be valid -- a position neither Dominion or PNG takes.

Indeed, Dominion entirely ignores Article 3 of Chapter 5 of Title 58, which provides for the "regulation of rates and services generally," starting with S.C. Code § 58-5-210 but including 14 other separate code provisions. Dominion relies solely on the following Article (Article 4, setting forth the Natural Gas Rate Stabilization Act), but that Article contains no provision establishing the scope and limits of the Commission's jurisdiction over natural gas utilities. Nor are the provisions in Article 4 even automatically applicable; "A public utility providing natural gas distribution service, in its discretion and at any time, may elect to have the terms of this article apply to its rates and charges for gas distribution, on a prospective basis, by filing a notice of election with the commission ...." S.C. Code § 58-5-410. The purpose of this Article, as the name of the Act suggests, is to afford a mechanism for stabilizing rates between general rate proceedings. S.C. Code § 58-5-415 (unless withdrawn, utility's election remains in effect until next general rate proceeding, which occurs under Section 58-5-240 – i.e. another *Article 3* provision (regulation of rates and services generally). The Commission's powers under Article 4 are an extension of the broad powers granted under Article 3 for a specific purpose – rate stabilization.

The short comments of ORS are entirely beside the point. ORS points not to a report concerning the regulation of natural gas pipelines, but to a *Petroleum Pipeline Study Committee Report* to the General Assembly. That petroleum report found that "state legislation would be required to establish a statewide permitting process, which could provide an enhanced opportunity for state agencies to review a proposed pipeline project while ensuring broader



public awareness, including opportunities for public comment.” ORS Comments at 1-2. As its title indicates, the report has nothing to do with natural gas pipelines. It begins by noting a 2015 opinion by the South Carolina Attorney General “holding that current South Carolina law is unclear as to whether South Carolina law allows a *petroleum* pipeline company to exercise eminent domain authority.” Report at 1 (emphasis added). The Attorney General recommended that the legislature clarify whether property can be condemned in South Carolina by a petroleum pipeline company. Soon after, the General Assembly instituted a moratorium prohibiting the use of eminent domain “by for-profit, pipeline companies that are not defined as a public utility under South Carolina Code of Laws Title 58,” which moratorium expired in June 2019. Of course, natural gas utilities are already defined as “public utilities” under Title 58. *See* S.C. Code 58-5-10(4) (defining public utility to include companies delivering natural gas distributed or transported by pipe to the public or any portion thereof for compensation). And there is no question that natural gas companies operating as public utilities in South Carolina have the power of eminent domain. S.C. Code § 58-7-10(A) (gas utilities have the same rights, powers and privileges as telephone companies under Article 17, Chapter 9 of Title 58, including power of eminent domain).

**Eminent Domain.** Nor does the proposal conflict with South Carolina’s eminent domain law. In fact, it is written to support existing law. The proposal provides local property owners notice of their rights to ensure that eminent domain law is followed and not misrepresented during the land acquisition process. Private property owners will be better informed about the law and will thereby be better able to see that it is followed. This proposal increases public knowledge of existing law and promotes adherence to existing law.

The comments of Dominion and PNG ignore the express language of the proposed regulation and invent a conflict where none exists. The proposed notice, disclosure, and preapproval processes preserve and operate separately from eminent domain proceedings.

First, neither Dominion nor PNG suggests any conflict between the notice and disclosure provisions of the proposal and eminent domain. Nor could they: these provisions simply obligate the for-profit gas pipeline industry to compile and share information with local residents in the path of a proposed pipeline. This information can only facilitate informed decision making by property owners should they eventually face the prospect of eminent domain for pipeline construction.

Although PNG suggests these provisions would place significant new obstacles in the way of gas service, providing thorough and accurate information about the consequences of and alternatives to gas service can only support and improve customer choice and protect private property rights.

Contrary to Dominion’s arguments, and as the proposal expressly states, the proposed public interest determination process has no impact on eminent domain proceedings. The public interest determination takes place before the exercise of eminent domain—once the determination is made, all aspects of eminent domain or voluntary property acquisition take place exactly as laid out by the Legislature in Title 28. The remedies landowners have against condemnation of their land remain exactly as before. And, as explained in our June 11 comments, the proposed public interest determination operates like a certificate of public convenience and necessity, which the Commission already issues for some gas pipelines and for electricity infrastructure – procedures which already operate in connection with subsequent



eminent domain proceedings. That determination does not block or alter the availability of the circuit court to evaluate the propriety of the exercise of eminent domain.

Dominion notes that Title 28 is intended to override conflicting laws, but this is irrelevant when the proposal is written expressly to preclude any conflict. To eliminate any possible doubt, the proposed regulation expressly provides that it has no effect whatsoever on eminent domain law or eminent domain proceedings – something that Dominion conveniently overlooks.

In short, the gas pipeline industry has presented no policy, practical, or legal reason that should prevent the Commission from adopting this proposal. This proposal is essential to protecting private property rights, communities, ratepayers, and our natural environment.

Once more, we thank the Commission and the Staff for their careful attention to these issues over the last year and for their consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Frank Holleman".

Frank S. Holleman III  
Senior Attorney